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401706—41

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 205

A. CRAWFORD GREENE, GUARDIAN OF THE ESTATE OF ALICE H. LESTER, AN INCOMPETENT PERSON, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 64–85) is reported in 41 B. T. A. 515. The opinion of the Circuit Court of Appeals (R. 112–123) is reported in 119 F. (2d) 383.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 21, 1941 (R. 123–124). A peti-

tion for rehearing was denied May 23, 1941. (R. 124.) The petition for a writ of certiorari was filed June 25, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The estate of an incompetent paid substantial sums as allowances for the support of her adult children during the taxable year. These payments were made pursuant to directions of the state court having jurisdiction of the incompetent's estate. Were the payments taxable as gifts?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are printed in the Appendix, *infra*, pp. 7–9.

STATEMENT

The facts were summarized in the findings of fact of the Board of Tax Appeals (R. 65–78).

The taxpayer is the guardian of the estate of Alice H. Lester, an incompetent person. The latter's property has been managed under the direction of the Superior Court of California for many years (R. 65). During 1936 and 1937, Mrs. Lester's two daughters received $21,000 and $20,000, respectively, out of the income of the incompetent's estate. Both daughters were over forty years of age and were married during the years in question (R. 65–66). (R. 72, 76.) These

payments were made pursuant to orders of the California Superior Court, which found that the daughters were wholly dependent upon the estate of their mother for maintenance and support and had no other means with which to defray living expenses (R. 66–68). The Board found that the daughters of Mrs. Lester were "poor persons unable to maintain themselves by work," as that expression is used in Section 206 of the California Civil Code. They were found to be entirely dependent upon the money received from their mother's estate (R. 70).

The Commissioner determined that the payments made to the daughters were gifts, and asserted deficiencies in gift taxes for the years 1936 and 1937 (R. 78). The Board held that the payments should not be deemed gifts, and overruled the deficiencies asserted by the Commission. The Circuit Court of Appeals reversed the decision of the Board (R. 123–124).

ARGUMENT

The gist of the petitioner's contention is that the decision below is in conflict with the rule that federal courts must follow decisions of state courts interpreting local rules of property law, where the operation of federal taxing acts depends on such local rules. *Blair* v. *Commissioner,* 300 U. S. 5; *Freuler* v. *Helvering,* 291 U. S. 35. But the operation of the federal act in this case does not turn upon local rules of property law. Rather, the ques-

tion presented here is whether or not the allowances to the children of Mrs. Lester should be classified as gifts under the revenue act, whatever label they may bear under state law. Whether a transaction results in a gift depends on the congressional definition of the term "gift," and this is purely a question of federal law. *United States* v. *Pelzer,* No. 393, October Term, 1940, decided March 3, 1941; *Morgan* v. *Commissioner,* 309 U. S. 78; *Lyeth* v. *Hoey,* 305 U. S. 188.

Section 503 of the Revenue Act of 1932 defines a gift for purposes of the federal tax law, and the definition is amplified in Articles 1 and 8 of Treasury Regulations 79, promulgated thereunder. A transaction of the type involved herein will not be termed a gift under this definition, if there exists adequate and full consideration in money or money's worth. Whether or not there is sufficient consideration under this definition is clearly a question of federal law, and petitioner concedes this to be correct (Pet. 9).

Assuming that the discharge of an obligation to support can be deemed adequate and full consideration in money or money's worth under the Revenue Acts, it is nevertheless highly doubtful that the payments involved herein were made in fulfillment of parental duty to support adult married children rather than in recognition of a parent's natural inclination. It is unquestioned that the existence of an obligation to support the children is to be determined by state law. The decisions of the

state court do not, however, clearly recognize the existence of such an obligation. Cf. *Helvering* v. *Leonard,* 310 U. S. 80, 84. The effect of the orders was merely to permit the guardian to use such of the ward's surplus income as the court believed the ward would have given to her daughters had she been of sound mind (R. 68–69). The court employed the terminology of Section 1558 of the Probate Code rather than the words of Section 206 of the Civil Code, and only the latter refers to an obligation to support "poor" relations. Therefore, there is no evidence that the payments discharged obligations of the ward or that the estate received any consideration which is measurable in money or money's worth. The payments clearly fall into the category of gifts.

Congress has expressly contemplated gifts of the type involved herein in permitting the exclusion from the category of taxable gifts all sums under $5,000. Revenue Act of 1932, Section 504 (b). These exclusions are intended to obviate the necessity of keeping track of ordinary allowances to children, Christmas gifts, and so forth. H. Rep. No. 708, 72d Cong., 1st Sess., p. 29 (1939–1 Cum. Bull. (Part 2) 457, 478); S. Rep. No. 665, 72d Cong., 1st Sess., p. 41 (1939–1 Cum. Bull. (Part 2) 496, 525–526). Unusually large allowances, such as those made in this case, exceeding the statutory exclusions and covering items such as a $590 fur coat and a $2,000 automobile, should clearly be included

as taxable gifts. (R. Vol. II, Exhibits S–79 and S–80.)

CONCLUSION

There is no conflict of decisions. The decision below is correct. The petition should be denied.

Respectfully submitted.

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JULY 1941.